IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO. 1028 OF 2005

IN

NOTICE OF MOTION NO. 3405 OF 2004

IN

SUIT NO. 3343 OF 2004

Sylvia Joseph Serrao & Ors. ..... Appellants.

Versus

Antonio John Serrao & Anr..... ... Respondents.

Mr. Y.R.Shah for the Appellants.

Mr.Mahesh Manon with Ms. Asha Nair i/by
M/s.Mahesh Menon & Co., for the Respondents.

CORAM : R. M. LODHA, and
S. A. BOBDE, JJ.

DATED : 15TH DECEMBER, 2006.

P.C.:

Heard.

2. At the outset, the Counsel for the respondents (plaintiffs) handed in the flat plan, marked "X" for identification purposes. Copy of the said plan was given to Mr. Y. R. Shah, Counsel for the appellants

(defendants).

3. Both the Counsel agree that by an interim arrangement, which is to remain operative until disposal of appeal, the portion marked in blue hatched lines may be allowed to remain in occupation of the respondents (plaintiffs) and portion marked by red hatched lines to remain in occupation of the appellants (defendants).

4. We, accordingly, dispose of the appeal by following order:

(i) The respondents (plaintiffs) shall remain in exclusive possession of the portion marked by blue hatched lines.

(ii) The appellants (defendants) shall remain in exclusive possession of the portion marked by red hatched lines.

(iii) The modification as per the plan concerning the installation of doors, passage wall and reconstruction of bathroom and toilet shall be completed within two months from today

positively. The costs shall be shared equally by the respondents (plaintiffs) and the appellants (defendants).

(iv) The appellants (defendants) shall share 40% of electricity consumption charges as per the bill received by the respondents (plaintiffs). The respondents (plaintiffs) shall give Xerox copy of the monthly electricity bill to the appellants (defendants) and within three days of the receipt of the Xerox copy of monthly electricity bill, the appellants (defendants) shall pay 40% of the electricity bill amount by accounts payee cheque to the respondents (plaintiffs). No payment by cash shall be treated as valid payment towards the electricity consumption charges.

(v) The appellants (defendants) shall file an undertaking before this Court, within 15 days from today, that the portion allotted to them shall be used by them only and shall not be transferred or alienated nor any third party rights shall be created therein.

5. The aforesaid arrangement is without prejudice to the contentions of the parties in the suit. Hearing of the suit is expedited.

6. The impugned order stands modified, accordingly.

7. Appeal stands disposed of.

Sd/-

(R. M. LODHA, J.)

Sd/-

(S. A. BOBDE, J.)